

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 60

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph J. Carraro

FOR THE STATE PERMANENT FUND TASK FORCE

AN ACT

RELATING TO PUBLIC FINANCE; REMOVING INVESTMENT LIMITATIONS AND
RAISING CERTAIN STANDARDS FOR PRUDENT INVESTMENT OF LAND GRANT
PERMANENT FUNDS; REMOVING INVESTMENT LIMITATIONS AND
ESTABLISHING STANDARDS FOR PRUDENT INVESTMENT OF CERTAIN STATE
FUNDS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-8-7 NMSA 1978 (being Laws 1957,
Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF STATE INVESTMENT OFFICER--
INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and
restrictions contained in policymaking regulations or
resolutions adopted by the council and subject to prior
authorization by the council, the state investment officer may

underscoring material = new
[bracketed material] = delete

1 make purchases, sales, exchanges, investments and reinvestments
2 of the assets of all funds administered under the supervision
3 of the council. The state investment officer shall see that
4 money invested is at all times handled in the best interests of
5 the state.

6 B. Securities or investments purchased or held may
7 be sold or exchanged for other securities and investments;
8 provided, however, that no sale or exchange shall be at a price
9 less than the going market at the time the securities or
10 investments are sold or exchanged.

11 C. In purchasing bonds, the state investment
12 officer shall require a certified or original written opinion
13 of a reputable bond attorney or the attorney general of the
14 state certifying the legality of the bonds to be purchased;
15 provided, however, this written opinion may be the approving
16 legal opinion ordinarily furnished with the bond issue.

17 D. The state investment officer shall formulate and
18 recommend to the council for approval investment regulations or
19 resolutions pertaining to the kind or nature of investments and
20 limitations, conditions and restrictions upon the methods,
21 practices or procedures for investment, reinvestment, purchase,
22 sale or exchange transactions that should govern the activities
23 of the investment office.

24 E. The council shall meet at least once each month,
25 and as often as exigencies may demand, to consult with the

.152445.2

underscoring material = new
[bracketed material] = delete

1 state investment officer concerning the work of the investment
2 office. The council shall have access to all files and records
3 of the investment office and shall require the state investment
4 officer to report on and provide information necessary to the
5 performance of council functions. The council may hire one or
6 more investment management firms to advise the council with
7 respect to the council's overall investment plan for the
8 investment of all funds managed by the investment office and
9 pay reasonable compensation for such advisory services from the
10 assets of the applicable funds, subject to budgeting and
11 appropriation by the legislature. The terms of any such
12 investment management services contract shall incorporate the
13 statutory requirements for investment of funds under the
14 council's jurisdiction.

15 F. ~~[For the purposes of the investment of all funds~~
16 ~~managed by the investment office, the state investment officer~~
17 ~~shall manage the funds in accordance with the prudent investor~~
18 ~~rule set forth in the Uniform Prudent Investor Act.]~~ With the
19 approval of the council, the state investment officer may
20 employ investment management services to invest the funds
21 managed by the investment office and may pay reasonable
22 compensation for investment management services from the assets
23 of the applicable funds, subject to budgeting and appropriation
24 by the legislature.

25 G. For funds available for investment for more than

.152445.2

underscored material = new
[bracketed material] = delete

1 one year, the state investment officer may contract with any
2 state agency to provide investment advisory or investment
3 management services, separately or through a pooled investment
4 fund; provided the state agency enters into a joint powers
5 agreement with the council and that state agency pays at least
6 the direct cost of such services. Notwithstanding any
7 statutory provision governing state agency investments, the
8 state investment officer may invest funds available from a
9 state agency pursuant to a joint powers agreement in any type
10 of investment permitted for the land grant permanent funds
11 under the prudent investor rule. In performing investment
12 services for a state agency, the council and the state
13 investment officer are exempt from the New Mexico Securities
14 Act of 1986. As used in this subsection, "state agency" means
15 any branch, agency, department, board, instrumentality,
16 institution or political subdivision of the state, the New
17 Mexico finance authority and any tax-exempt private endowment
18 entity whose sole beneficiary is a state agency."

19 Section 2. Section 6-8-10 NMSA 1978 (being Laws 1957,
20 Chapter 179, Section 10, as amended) is amended to read:

21 "6-8-10. INVESTMENT STANDARDS.--~~[Investments made~~
22 ~~pursuant to Sections 6-8-1 through 6-8-16 NMSA 1978 shall be~~
23 ~~made in accordance with the prudent investor rule set forth in~~
24 ~~the Uniform Prudent Investor Act.]~~

25 A. The state investment officer shall invest and

.152445.2

underscored material = new
[bracketed material] = delete

1 manage the money available for investment from the land grant
2 permanent funds as a prudent investor would by considering the
3 purposes, terms, distribution requirements and other
4 circumstances of the land grant permanent funds. In satisfying
5 this standard, the state investment officer shall exercise
6 reasonable care, skill and caution.

7 B. An investment or management decision of the
8 state investment officer respecting money available for
9 investment from the land grant permanent funds shall not be
10 evaluated in isolation, but in the context of the portfolios of
11 the land grant permanent funds and as part of an overall
12 investment strategy having risk and return objectives
13 reasonably suited to the land grant permanent funds.

14 C. In making and implementing an investment
15 decision, the state investment officer shall:

16 (1) diversify the investments of the money
17 available for investment from the land grant permanent funds,
18 unless it is not prudent to diversify the investments under the
19 circumstances;

20 (2) act with prudence in deciding whether and
21 how to delegate authority to others and in the selection and
22 supervision of an investment manager; and

23 (3) incur only costs that are reasonable in
24 amount and appropriate to the investment and administrative
25 responsibilities of the state investment officer."

.152445.2

underscored material = new
[bracketed material] = delete

1 Section 3. Section 6-8-20 NMSA 1978 (being Laws 1987,
2 Chapter 219, Section 3, as amended) is amended to read:

3 "6-8-20. PRIVATE EQUITY INVESTMENT ADVISORY COMMITTEE
4 CREATED--MEMBERSHIP--DUTIES--TERMS--LIABILITIES--CONFLICT OF
5 INTEREST.--

6 A. There is created the "private equity investment
7 advisory committee" to the council. The committee consists of
8 the state investment officer, a member of the council appointed
9 by the governor and three members who are qualified by
10 competence and experience in finance and investment and
11 knowledgeable about the private equity investment process and
12 who are appointed by the governor.

13 B. Members appointed by the governor, except the
14 council member, shall be appointed for three-year terms;
15 provided that the terms of the initial committee members shall
16 be staggered so that the term of one member expires each year.
17 After the initial appointments, all governor-appointed members
18 shall be appointed for three-year terms. Members shall serve
19 until their successors are appointed. A vacancy occurring
20 other than by expiration of term shall be filled in the same
21 manner as the original appointment, but only for the unexpired
22 term.

23 C. The committee shall review and make
24 recommendations to the council on investments authorized
25 pursuant to Sections [~~6-8-21, 7-27-5.6~~] 7-27-5.15 and

.152445.2

underscored material = new
[bracketed material] = delete

1 7-27-5.26 NMSA 1978 and shall advise the council in matters and
2 policies related to such investments. The committee shall
3 establish policies for national private equity fund
4 investments, New Mexico private equity fund investments and New
5 Mexico film private equity fund investments not less often than
6 annually and shall make copies available to interested parties.

7 D. Members of the committee shall receive per diem
8 and mileage as provided for nonsalaried public officers in the
9 Per Diem and Mileage Act and shall receive no other
10 compensation, perquisite or allowance.

11 E. The committee shall elect annually a chairman
12 from among its members and may elect other officers as
13 necessary. The committee shall meet upon the call of the
14 chairman or the state investment officer.

15 F. Members of the committee are public employees
16 within the meaning of the Tort Claims Act and are entitled to
17 all immunity and indemnification provided under that act.

18 G. No person may be a member of the committee if
19 any recommendation, action or decision of the committee will or
20 is likely to result in direct, measurable economic gain to that
21 person or [his] that person's employer.

22 H. The state investment officer may enter into
23 contracts with investment advisors for private equity fund
24 investments and film fund investments authorized pursuant to
25 Sections [~~6-8-21, 7-27-5.6~~] 7-27-5.15 and 7-27-5.26 NMSA 1978

.152445.2

underscored material = new
[bracketed material] = delete

1 and may pay budgeted expenses for the advisors from the assets
2 of any fund administered under the supervision of the council,
3 as applicable."

4 Section 4. Section 7-27-5 NMSA 1978 (being Laws 1983,
5 Chapter 306, Section 7, as amended) is amended to read:

6 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND--
7 PRUDENT INVESTOR STANDARD.--

8 A. The severance tax permanent fund shall be
9 invested for two general purposes, to provide income to the
10 fund and to stimulate the economy of New Mexico, preferably on
11 a continuing basis. [~~The investments in Sections 7-27-5.1 and~~
12 ~~7-27-5.6 NMSA 1978 shall be those intended to provide maximum~~
13 ~~income to the fund and shall be referred to as the market rate~~
14 ~~investments.] The investments permitted in Sections 7-27-5.3~~
15 ~~through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22 and~~
16 ~~7-27-5.24 through 7-27-5.26 NMSA 1978 shall be those intended~~
17 ~~to stimulate the economy of New Mexico and shall be referred to~~
18 ~~as the differential rate investments. [The prudent man rule~~
19 ~~shall be applied to the market rate investments, and the state~~
20 ~~investment officer shall keep separate records of the earnings~~
21 ~~of the market rate investments.] Investments that are not~~
22 ~~differential rate investments and that are not investments~~
23 ~~permitted in Sections 7-27-5.19 through 7-27-5.21 and 7-27-5.23~~
24 ~~NMSA 1978 shall be referred to as market rate investments. All~~
25 transactions [~~entered into on or after July 1, 1991]~~ shall be

.152445.2

underscored material = new
[bracketed material] = delete

1 accounted for in accordance with generally accepted accounting
2 principles.

3 B. The state investment officer shall make market
4 rate investments as a prudent investor would, by considering
5 the purposes, terms, distribution requirements and other
6 circumstances of the severance tax permanent fund. In
7 satisfying this standard, the state investment officer shall
8 exercise reasonable care, skill and caution.

9 C. An investment or management decision of the
10 state investment officer respecting a market rate investment of
11 the severance tax permanent fund shall not be evaluated in
12 isolation, but in the context of the portfolio of the severance
13 tax permanent fund as a whole and as part of an overall
14 investment strategy having risk and return objectives
15 reasonably suited to the fund.

16 D. In making and implementing an investment
17 decision respecting a market rate investment, the state
18 investment officer shall:

19 (1) diversify the investments of the severance
20 tax permanent fund, unless it is not prudent to diversify the
21 investments under the circumstances;

22 (2) act with prudence in deciding whether and
23 how to delegate authority to others and in the selection and
24 supervision of an investment advisor or investment manager; and

25 (3) incur only costs that are reasonable in

.152445.2

underscored material = new
[bracketed material] = delete

1 amount and appropriate to the investment responsibilities of
2 the state investment officer."

3 Section 5. Section 10-11-132 NMSA 1978 (being Laws 1987,
4 Chapter 253, Section 132, as amended) is amended to read:

5 "10-11-132. INVESTMENT OF FUNDS [~~TYPES OF INVESTMENTS~~]
6 INDEMNIFICATION OF BOARD MEMBERS.--The funds created by the
7 state retirement system acts are trust funds of which the
8 retirement board is trustee. Members of the retirement board
9 jointly and individually shall be indemnified by the state from
10 the funds [~~by the state~~] administered by the retirement board
11 from all claims, demands, suits, actions, damages, judgments,
12 costs, charges and expenses, including court costs and attorney
13 fees and against all liability losses and damages of any nature
14 [~~whatsoever~~] that members shall or may [~~at any time~~] sustain by
15 reason of any decision made in the performance of their duties
16 pursuant to the state retirement system acts. [~~The retirement~~
17 ~~board may invest and reinvest the funds in the following~~
18 ~~classes of securities and investments:~~

19 A. ~~bonds, notes or other obligations of the United~~
20 ~~States treasury or those guaranteed by or for which the credit~~
21 ~~of the United States government is pledged for the payment of~~
22 ~~the principal and interest;~~

23 B. ~~bonds, notes or other obligations of a~~
24 ~~municipality or other political subdivision of this state that~~
25 ~~are registered by the United States securities and exchange~~

.152445.2

underscored material = new
[bracketed material] = delete

1 ~~commission, are publicly traded and are issued pursuant to a~~
2 ~~law of this state if the issuer, within ten years prior to~~
3 ~~making the investment, has not been in default in payment of~~
4 ~~any part of the principal or interest on any debt evidenced by~~
5 ~~its bonds, notes or other obligations. If any bonds are~~
6 ~~municipal or county utility revenue bonds or utility district~~
7 ~~revenue bonds, the revenues of the utility, except for~~
8 ~~operation and maintenance expenses, shall be pledged wholly to~~
9 ~~the payment of the interest and principal of the indebtedness~~
10 ~~and the utility project shall have been completely self-~~
11 ~~supporting for a period of five years next preceding the date~~
12 ~~of investment;~~

13 ~~G. stocks, bonds, debentures or other obligations~~
14 ~~issued by any agency or corporation of the United States~~
15 ~~government under the authority of acts of the United States~~
16 ~~congress;~~

17 ~~D. collateralized obligations held in trust that:~~

18 ~~(1) are publicly traded and are registered~~
19 ~~with the United States securities and exchange commission; and~~

20 ~~(2) have underlying collateral that is either~~
21 ~~an obligation of the United States government or else has a~~
22 ~~credit rating above or equal to BBB according to the Standard~~
23 ~~and Poor's rating system or Baa according to the Moody's~~
24 ~~investors rating system;~~

25 ~~E. bonds, notes, commercial paper or other~~

.152445.2

underscored material = new
[bracketed material] = delete

1 ~~obligations of any corporation organized and operating within~~
2 ~~the United States; provided that the securities shall have a~~
3 ~~minimum credit rating of B according to the Standard and Poor's~~
4 ~~rating system or B according to the Moody's investors rating~~
5 ~~system or their equivalents; and provided that not more than~~
6 ~~ten percent of the funds for which the retirement board is~~
7 ~~trustee shall at any one time be invested in debt obligations~~
8 ~~of corporations with a credit rating less than BBB according to~~
9 ~~the Standard and Poor's rating system or Baa according to the~~
10 ~~Moody's investors rating system of their equivalents;~~

11 ~~F. preferred stock, common stock, any security~~
12 ~~convertible to common stock or American depository receipts~~
13 ~~that are registered by the United States securities and~~
14 ~~exchange commission of any corporation organized and operating~~
15 ~~within the United States whose securities are listed on at~~
16 ~~least one stock exchange that has been approved by or is~~
17 ~~controlled by the United States securities and exchange~~
18 ~~commission or on the national association of securities dealers~~
19 ~~national market; provided that the corporations shall have~~
20 ~~minimum shareholders' equity of twenty-five million dollars~~
21 ~~(\$25,000,000) and that the funds of which the retirement board~~
22 ~~is trustee shall not be invested in more than ten percent of~~
23 ~~the voting stock of a company; and further provided that~~
24 ~~investing with enhanced index managers using futures and~~
25 ~~options is permitted solely for the purpose of adding~~

.152445.2

underscored material = new
[bracketed material] = delete

1 ~~incremental value and controlling risk and not for speculation;~~

2 ~~G. obligations of non-United States governmental or~~
3 ~~quasi-governmental entities, and these may be denominated in~~
4 ~~foreign currencies; obligations, including but not limited to~~
5 ~~bonds, notes or commercial paper of any corporation organized~~
6 ~~outside of the United States, and these may be denominated in~~
7 ~~foreign currencies; or preferred stock or common stock of any~~
8 ~~corporation organized outside of the United States whose~~
9 ~~securities are listed on at least one national or foreign stock~~
10 ~~exchange or are traded in an over-the-counter market, and these~~
11 ~~may be denominated in foreign currencies. Currency~~
12 ~~transactions, including spot or cash basis currency~~
13 ~~transactions, forward contracts and buying or selling options~~
14 ~~or futures on foreign currencies, shall be permitted but only~~
15 ~~for the purposes of hedging foreign currency risk and not for~~
16 ~~speculation;~~

17 ~~H. stocks or shares of a diversified investment~~
18 ~~company registered under the federal Investment Company Act of~~
19 ~~1940, provided that the investment company has total assets~~
20 ~~under management of at least one hundred million dollars~~
21 ~~(\$100,000,000); individual, common or collective trust funds of~~
22 ~~banks or trust companies, provided that the investment manager~~
23 ~~has assets under management of at least one hundred million~~
24 ~~dollars (\$100,000,000); provided that the board may allow~~
25 ~~reasonable administrative and investment expenses to be paid~~

.152445.2

underscored material = new
[bracketed material] = delete

1 ~~directly from the income or assets of these investments;~~
2 ~~I. contracts, including contracts through its~~
3 ~~designated agent, for the temporary exchange of securities for~~
4 ~~the use by broker-dealers, banks or other recognized~~
5 ~~institutional investors, for periods not to exceed one year,~~
6 ~~for a specified fee or consideration; provided no such~~
7 ~~contracts shall be entered into unless the contracts are fully~~
8 ~~secured by a collateralized, irrevocable letter of credit~~
9 ~~running to the retirement board, cash or equivalent collateral~~
10 ~~of at least one hundred two percent of the market value of the~~
11 ~~securities plus accrued interest temporarily exchanged, which~~
12 ~~collateral shall be delivered to the state fiscal agent or its~~
13 ~~designee contemporaneously with the transfer of funds or~~
14 ~~delivery of the securities; and further provided that such~~
15 ~~contracts may authorize the retirement board to invest cash~~
16 ~~collateral in instruments or securities that are authorized~~
17 ~~investments for the funds and may authorize payment of a fee~~
18 ~~from the funds or from income generated by the investment of~~
19 ~~cash collateral to the borrower of securities providing cash as~~
20 ~~collateral, and the retirement board may apportion income~~
21 ~~derived from the investment of cash collateral to pay its agent~~
22 ~~in securities lending transactions; and~~
23 ~~J. contracts for the present purchase and resale at~~
24 ~~a specified time in the future, not to exceed one year, of~~
25 ~~specific securities at specified prices at a price differential~~

.152445.2

underscoring material = new
[bracketed material] = delete

1 ~~representing the interest income to be earned by the retirement~~
2 ~~board. No such contract shall be entered into unless the~~
3 ~~contract is fully secured by obligations of the United States,~~
4 ~~or other securities backed by the United States, having a~~
5 ~~market value of at least one hundred two percent of the amount~~
6 ~~of the contract. The collateral required in this section shall~~
7 ~~be delivered to the state fiscal agent or his designee~~
8 ~~contemporaneously with the transfer of funds or delivery of the~~
9 ~~securities, at the earliest time industry practice permits, but~~
10 ~~in all cases settlement shall be on a same day basis. No such~~
11 ~~contract shall be entered into unless the contracting bank,~~
12 ~~brokerage firm or recognized institutional investor has a net~~
13 ~~worth in excess of five hundred million dollars~~
14 ~~(\$500,000,000).]"~~

15 Section 6. Section 10-11-133 NMSA 1978 (being Laws 1987,
16 Chapter 253, Section 133, as amended) is amended to read:

17 "10-11-133. INVESTMENT OF FUNDS--PRUDENT INVESTOR
18 STANDARD--CONDITIONS.--

19 A. Commissions paid for the purchase and sale of
20 any security shall not exceed brokerage rates prescribed and
21 approved by stock exchanges that have been approved by or are
22 under the control of the United States securities and exchange
23 commission or by industry practice.

24 [~~B. Investments of money from any fund of the~~
25 ~~association shall be made with the exercise of that degree of~~

.152445.2

underscored material = new
[bracketed material] = delete

1 ~~judgment and care, under the circumstances then prevailing,~~
2 ~~that persons of prudence, discretion and intelligence exercise~~
3 ~~in the management of their own affairs, not for speculation but~~
4 ~~for investment, considering the probable safety of their~~
5 ~~capital as well as the probable income to be derived. All~~
6 ~~purchases of securities shall be made at or below the current~~
7 ~~market price at the time of purchase.]~~

8 B. The retirement board shall invest and manage the
9 funds administered by the retirement board as a prudent
10 investor would, by considering the purposes, terms,
11 distribution requirements and other circumstances of the trust.
12 In satisfying this standard, the retirement board shall
13 exercise reasonable care, skill and caution.

14 C. An investment or management decision of the
15 retirement board respecting a fund that it administers shall
16 not be evaluated in isolation, but in the context of the fund
17 portfolio as a whole and as part of an overall investment
18 strategy having risk and return objectives reasonably suited to
19 the fund.

20 D. In making and implementing an investment
21 decision, the retirement board shall:

22 (1) diversify the investments of each fund
23 that it administers, unless it is not prudent to diversify the
24 investments under the circumstances;

25 (2) act with prudence in deciding whether and

underscoring material = new
[bracketed material] = delete

1 how to delegate authority to others and in the selection and
2 supervision of an investment manager; and

3 (3) incur only costs that are reasonable in
4 amount and appropriate to the investment and administrative
5 responsibilities of the retirement board and the association.

6 [~~G.~~] E. Securities purchased with money from or
7 held for any fund administered by the retirement board and for
8 which the retirement board is trustee shall be in the custody
9 of the state treasurer who shall, at the direction of the
10 retirement board, deposit with a bank or trust company the
11 securities for safekeeping or servicing.

12 [~~D.~~] F. The retirement board may consult with the
13 state investment council or state investment officer and
14 request information or advice with respect to the retirement
15 board's overall investment plan, may utilize the services of
16 the state investment council and state investment officer and
17 may act on their advice concerning the plan. The state
18 investment council and state investment officer shall render
19 investment services to the retirement board without expense to
20 the retirement board. The retirement board may also employ the
21 investment management services of a trust company or national
22 bank exercising trust powers or of an investment counseling
23 firm and pay reasonable compensation for such services from
24 funds administered by the retirement board. The terms of any
25 such investment management services contract shall incorporate

.152445.2

underscoring material = new
[bracketed material] = delete

1 the statutory requirements for investment of funds under the
2 retirement board's jurisdiction.

3 ~~[E.]~~ G. Except as provided in the Public Employees
4 Retirement Act, ~~[no]~~ a member of the retirement board, employee
5 of the retirement board or any person connected with the
6 retirement board in any manner shall not:

7 (1) have any direct or indirect interest in
8 the gains or profits of any investment made by the retirement
9 board;

10 (2) receive any direct or indirect pay or
11 emolument for services provided to the retirement board or the
12 association;

13 (3) directly or indirectly, for the member,
14 employee or person, for themselves or as agent or partner of
15 others, borrow any of the funds or deposits of the association
16 or in any manner use them except to make current and necessary
17 payments authorized by the retirement board; or

18 (4) become an endorser or surety or become in
19 any manner an obligor for money of the retirement board loaned
20 or borrowed."

21 Section 7. Section 22-11-13 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 137, as amended) is amended to read:

23 "22-11-13. ~~[INVESTMENT OF]~~ BOARD AUTHORITY TO INVEST THE
24 FUND--PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

25 ~~[A. The board is authorized to invest or reinvest~~

.152445.2

underscored material = new
[bracketed material] = delete

1 ~~the fund and may invest the fund only in the following:~~

2 ~~(1) obligations, including but not limited to~~
3 ~~bills, bonds or notes of the United States, United States~~
4 ~~government-sponsored enterprises or federal agency securities;~~

5 ~~(2) obligations, including but not limited to~~
6 ~~bills, bonds and notes of governments other than the United~~
7 ~~States or their political subdivisions, agencies or~~
8 ~~instrumentalities, and these may be denominated in foreign~~
9 ~~currencies;~~

10 ~~(3) obligations, including but not limited to~~
11 ~~bonds or notes of a municipality or political subdivision of~~
12 ~~the state that were issued pursuant to law; provided the issuer~~
13 ~~has not, within ten years prior to making the investment, been~~
14 ~~in default for more than three months in the payment of any~~
15 ~~part of the principal or interest on any debt evidenced by its~~
16 ~~bonds, notes or obligations; and provided the bonds are city or~~
17 ~~county utility, or utility-district revenue bonds with the~~
18 ~~revenue of such utility, other than for payment of operation~~
19 ~~and maintenance expenses, pledged wholly to payment of the~~
20 ~~interest on and the principal of such indebtedness, and the~~
21 ~~utility project has been completely self-supporting for a~~
22 ~~period of five years preceding the date of the investment;~~

23 ~~(4) contracts for the present purchase and~~
24 ~~resale at a specified time in the future, not to exceed one~~
25 ~~year, of specific securities at specified prices at a price~~

.152445.2

underscoring material = new
[bracketed material] = delete

1 ~~differential representing the interest income to be earned by~~
2 ~~the board. No such contract shall be entered into unless the~~
3 ~~contract is fully secured by obligations of the United States,~~
4 ~~or other securities backed by the United States, having a~~
5 ~~market value of at least one hundred two percent of the amount~~
6 ~~of the contract. The collateral required in this section shall~~
7 ~~be delivered to the state fiscal agent or his designee~~
8 ~~contemporaneously with the transfer of funds or delivery of the~~
9 ~~securities, at the earliest time industry practice permits, but~~
10 ~~in all cases settlement shall be on a same-day basis. No such~~
11 ~~contract shall be entered into unless the contracting bank,~~
12 ~~brokerage firm or recognized institutional investor has a net~~
13 ~~worth in excess of five hundred million dollars (\$500,000,000);~~
14 ~~(5) obligations, including but not limited to~~
15 ~~bonds, notes, debentures, instruments, conditional sales~~
16 ~~agreements, securities or other evidence of indebtedness of any~~
17 ~~corporation, partnership or trust organized within the United~~
18 ~~States; preferred stock or common stock or any security~~
19 ~~convertible to common stock of any corporation, partnership or~~
20 ~~trust organized within the United States whose securities are~~
21 ~~listed on at least one national stock exchange or on the~~
22 ~~N.A.S.D. national market or American depositary receipts of any~~
23 ~~corporation organized outside the United States whose~~
24 ~~securities are listed on at least one national stock exchange~~
25 ~~or on the N.A.S.D. national market; provided that the fund~~

.152445.2

underscored material = new
[bracketed material] = delete

1 shall not at any one time own more than ten percent of the
2 voting stock of a company;

3 ~~(6) prime bankers' acceptances issued by money~~
4 ~~center banks;~~

5 ~~(7) obligations, including but not limited to~~
6 ~~bonds, notes, debentures, instruments, conditional sales~~
7 ~~agreements, securities or other evidence of indebtedness of any~~
8 ~~corporation, partnership or trust organized outside of the~~
9 ~~United States, and these may be denominated in foreign~~
10 ~~currencies; preferred stock or common stock or any security~~
11 ~~convertible to common stock of any corporation, partnership or~~
12 ~~trust organized outside of the United States whose securities~~
13 ~~are listed on at least one national or foreign stock exchange,~~
14 ~~and these may be denominated in foreign currencies; provided~~
15 ~~that the fund shall not at any one time own more than ten~~
16 ~~percent of the voting stock of a company;~~

17 ~~(8) currency transactions, including spot or~~
18 ~~cash basis currency transactions, forward currency contracts~~
19 ~~and buying or selling options or futures on foreign currencies,~~
20 ~~but only for the purposes of hedging foreign currency risk and~~
21 ~~not for speculation;~~

22 ~~(9) stocks or shares of a diversified~~
23 ~~investment company registered under the Investment Company Act~~
24 ~~of 1940, as amended, which invests primarily in United States~~
25 ~~or non-United States fixed income securities, equity securities~~

.152445.2

underscored material = new
[bracketed material] = delete

1 ~~or short-term debt instruments pursuant to Paragraphs (1), (2),~~
2 ~~(4), (5) and (7) of this subsection, provided that the~~
3 ~~investment company has total assets under management of at~~
4 ~~least one hundred million dollars (\$100,000,000); individual,~~
5 ~~common or collective trust funds of banks or trust companies,~~
6 ~~which invest primarily in United States or non-United States~~
7 ~~fixed income securities, equity securities or short-term debt~~
8 ~~instruments pursuant to Paragraphs (1), (2), (4), (5) and (7)~~
9 ~~of this subsection, provided that the investment manager has~~
10 ~~assets under management of at least one hundred million dollars~~
11 ~~(\$100,000,000); the board may allow reasonable administrative~~
12 ~~and investment expenses to be paid directly from the income or~~
13 ~~assets of these investments; or~~

14 ~~(10) industrial revenue bonds issued pursuant~~
15 ~~to the Industrial Revenue Bond Act, where both the principal~~
16 ~~and interest of the bonds are fully and unconditionally~~
17 ~~guaranteed by a lease agreement executed by a corporation~~
18 ~~organized and operating within the United States and has issued~~
19 ~~securities traded on one or more national stock exchanges and~~
20 ~~where the senior securities of the guaranteeing corporation~~
21 ~~would have the equivalent of a BAA rating.]~~

22 A. The board is authorized to invest or reinvest
23 the fund. The board shall invest and manage the fund as a
24 prudent investor would, by considering the purposes, terms,
25 distribution requirements and other circumstances of the trust.

.152445.2

underscoring material = new
[bracketed material] = delete

1 In satisfying this standard, the board shall exercise
2 reasonable care, skill and caution.

3 B. An investment or management decision of the
4 board concerning the fund shall not be evaluated in isolation,
5 but in the context of the fund portfolio as a whole and as part
6 of an overall investment strategy having risk and return
7 objectives reasonably suited to the fund.

8 [~~B.~~] C. The board or its designated agent may enter
9 into contracts for the temporary exchange of securities for the
10 use by broker-dealers, banks or other recognized institutional
11 investors, for periods not to exceed one year, for a specified
12 fee or consideration. [~~No~~] Such a contract shall not be
13 entered into unless the contract is fully secured by a
14 collateralized, irrevocable letter of credit running to the
15 board, cash or equivalent collateral of at least one hundred
16 two percent of the market value of the securities plus accrued
17 interest temporarily exchanged. This collateral shall be
18 delivered to the state fiscal agent or its designee
19 contemporaneously with the transfer of funds or delivery of the
20 securities. Such contract may authorize the board to invest
21 cash collateral in instruments or securities that are
22 authorized fund investments and may authorize payment of a fee
23 from the fund or from income generated by the investment of
24 cash collateral to the borrower of securities providing cash as
25 collateral. The board may apportion income derived from the

.152445.2

underscored material = new
[bracketed material] = delete

1 investment of cash collateral to pay its agent in securities
2 lending transactions.

3 ~~[G.]~~ D. Commissions paid for the purchase or sale
4 of any securities pursuant to the provisions of the Educational
5 Retirement Act shall not exceed brokerage rates prescribed and
6 approved by national stock exchanges or by industry practice.

7 ~~[D. Investment of the fund shall be made with the~~
8 ~~exercise of that degree of judgment and care, under the~~
9 ~~circumstances then prevailing, which men of prudence,~~
10 ~~discretion and intelligence exercise in the management of their~~
11 ~~own affairs, not for speculation but for investment,~~
12 ~~considering the probable safety of their capital as well as the~~
13 ~~probable income to be derived.]~~

14 E. Securities purchased for the fund shall be held
15 in the custody of the state treasurer. At the direction of the
16 board, the state treasurer shall deposit with a bank or trust
17 company the securities for safekeeping or servicing.

18 F. The board may consult with the state investment
19 council or the state investment officer; may request from the
20 state investment council or the state investment officer any
21 information, advice or recommendations with respect to
22 investment of the fund; may utilize the services of the state
23 investment council or the state investment officer; and may act
24 upon any advice or recommendations of the state investment
25 council or the state investment officer. The state investment

.152445.2

underscored material = new
[bracketed material] = delete

1 council or the state investment officer shall render investment
2 advisory services to the board upon request and without expense
3 to the board. The board may employ investment advisory
4 services and pay reasonable compensation from the fund for the
5 services. The board may also employ investment management
6 services and pay reasonable compensation from the fund for the
7 services to make investment decisions on behalf of the board,
8 within the investment objectives, policies and operating
9 guidelines as directed by the board to the investment manager.

10 G. Members of the board, jointly and individually,
11 shall be indemnified from the fund by the state from all
12 claims, demands, suits, actions, damages, judgments, costs,
13 charges and expenses, including court costs and [~~attorneys~~]
14 attorney fees, and against all liability, losses and damages of
15 any nature whatsoever that members shall or may at any time
16 sustain by reason of any decision made in the performance of
17 their duties pursuant to this section."

18 Section 8. REPEAL.--

19 A. Sections 6-8-9, 6-8-19 and 6-8-21 NMSA 1978
20 (being Laws 1957, Chapter 179, Section 9, Laws 1987, Chapter
21 126, Section 1 and Laws 1997, Chapter 183, Section 5, as
22 amended) are repealed.

23 B. Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 (being
24 Laws 1983, Chapter 306, Section 8 and Laws 1987, Chapter 219,
25 Section 2, as amended) are repealed.

.152445.2

